

# **2001 State Reimbursement of Extraordinary Criminal Justice Costs Report and Prioritized List**

## ***Introduction***

Aggravated murder cases are charged under RCW Chapter 10.95, which provides that a person is guilty of aggravated murder if he or she is convicted of premeditated first degree murder and one or more specific aggravating circumstances are found to exist beyond a reasonable doubt. Under the law, a defendant convicted of aggravated murder must be sentenced to life imprisonment without possibility of release or parole, or, if the prosecutor serves a death penalty notice and the jury finds no sufficiently mitigating circumstances, sentenced to death.

The 1999 Washington State Legislature, in recognition of the extraordinary expense involved in investigating, prosecuting and defending aggravated murder cases, and of the insufficiency of budgeted criminal justice funds to meet these demands, passed the Extraordinary Criminal Justice Costs Act. This statute created a process for counties to seek state reimbursement of the costs incurred in these cases.

In accordance with the Act, the Washington State Office of Public Defense (OPD) in 1999, 2000 and 2001 developed procedures for processing the petitions, auditing the veracity of the petitions, and prioritizing them in consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC). The 2000 Legislature appropriated a total of \$550,000 to three of the eight counties that submitted reimbursement petitions for 1999 costs, and the 2001 Legislature divided a total appropriation of \$975,000 between each of the seven counties that submitted petitions for reimbursement of 2000 costs.

## ***Petitions***

Before petitions were distributed to the counties in September 2001, Washington State OPD revised and simplified them based on the prior two years' experience. Petitions were filed by December 1, 2001, but the counties were permitted to submit supplemental materials through the first few days of January 2002, in order to include updated information regarding pending cases. Throughout the process, Washington State OPD worked with the counties to balance the need for claims documentation with protection of privileged or confidential information, resulting in improved sensitivity to these issues in the context of ongoing litigation.

## ***Review Process***

In accordance with the statute, Washington State OPD audited and verified the petitions submitted. Undocumented expenses, costs for cases not active in 2001, capital expenses, and fixed costs such as rent were disallowed. The counties were given an opportunity to name the year each claimed cost was incurred before the list was finalized.

Meetings with WAPA and WASPC were held to evaluate the claims, discuss the process and prepare the prioritized list. During those discussions a number of important decisions were made that will facilitate this process in the future, including the following:

**Standardized Figures.** Because accounting systems and procedures vary significantly among the counties, a policy of using criminal justice budget figures compiled by the Washington State Association of Counties was adopted. The use of these criminal justice budget totals based on a single set of definitions and classifications ensures that all of the counties' claims will be treated fairly and consistently.

**Appellate Costs.** The prosecutorial costs of processing appeals from aggravated murder convictions, particularly where the death penalty is imposed, can be substantial. For the first time, counties filing petitions in 2001 have included these costs, in amounts less than 2% of the claims presented by them. The prioritized list claims of these counties include appellate costs.

### ***Prioritizing the Petitions***

The 2001 petitions were prioritized based on the factors listed in the statute: disproportionate fiscal impact relative to the county criminal justice budget, efficient use of resources, and whether the costs were extraordinary and could not be reasonably accommodated and anticipated in the normal budget process. They appear on the list in order of priority. Each of the prioritizing factors is discussed below.

**Disproportionate Fiscal Impact Relative to the County Budget.** This factor addresses the difficulty faced by counties when the costs of investigating, preparing and trying the most serious criminal cases competes with other obligations of county government. A ratio of the county's calendar year case costs, divided by the county's criminal justice budget, was selected to best quantify the degree of disproportional fiscal impact experienced by each county. All of the petitions submitted this year included aggravated murder expenses that had significant fiscal impacts on the county's criminal justice budget. However, the percentage of disproportionality varied substantially.

**Efficient Use of Resources.** When faced with the demands aggravated murder cases imposed on their limited resources, the counties found a variety of ways to economize. The resulting efficiencies preserved criminal justice resources and reduced the costs reflected in the aggravated murder cost claims presented. Each county made substantial efforts to control costs within the context of the individual cases and constitutional mandates. Their descriptions of their efforts are set forth in Attachment 1.

**Extraordinary Nature of Costs.** When aggravated murder cases are extraordinary, they cannot be easily incorporated into the county budget cycle. Most smaller counties have limited experience with aggravated murder cases and the fiscal impacts cannot be predicted or absorbed. Factors that make these costs extraordinary and prevent them from being "reasonably accommodated and anticipated in the normal budget process" are specific to the individual circumstances of the cases and the counties in which they arise. Attachment 2 reports each county's petition statement regarding these factors.

**Adjustments to Criminal Justice Budget Amounts.** Upon legislative staff request, Washington State OPD segregated the counties' claims by the year each cost was incurred. The aggregate costs for each year were compared to that year's criminal justice budget, and the resulting impact was calculated.

## ***Policies Affecting Future Years***

Two policy decisions have been made regarding the Extraordinary Criminal Justice Act prioritizing process in future years.

**Calendar Year Costs.** For future petitions, counties should generally seek reimbursement during the years that costs are incurred.

**Compliance with Capital Counsel Appointment Rule.** At the Chief Justice's request, Washington State OPD recently submitted a court rule change to require trial courts to appoint Capital Counsel Panel list-qualified defense attorneys in any aggravated murder case in which the death penalty might be imposed, unless very limited good cause grounds for appointing other counsel exists. This rule will ensure that highly-qualified counsel are appointed to represent capital defendants. The rule is being considered by the Court and is expected to be adopted this spring. The Washington State OPD Advisory Committee has decided that upon its probable adoption, an additional prioritizing consideration for state reimbursement of defense costs under the Extraordinary Criminal Justice Costs Act should be whether the trial court complied with the court rule.

## ***Prioritized List***

The 2001 prioritized list is attached. The counties are listed in order of priority, according to the disproportionate impact of the county's yearly aggravated murder costs on its yearly criminal justice budgets.

## Extraordinary Criminal Justice Costs Act 2001 Prioritized List

<u>Year</u>	<u>County</u>	<u>Adjusted Claim</u>	<u>Criminal Justice Budget</u>	<u>Budget Impact</u>
2001	Franklin	562,054	8,729,506	6.4%
2000	Franklin	69,445	8,461,589	0.8%
2001	Stevens	163,400	6,490,196	2.5%
2000	Stevens	7,492	6,568,008	0.1%
2001	Kitsap	915,300	40,133,088	2.3%
2000	Kitsap	147,453	38,059,875	0.4%
1999	Kitsap	7,391	33,108,222	0.02%
2001	Klickitat	70,214	4,740,370	1.5%
2000	Klickitat	5,734	4,743,890	0.1%
2001	Whatcom	321,785	28,522,108	1.1%
2000	Whatcom	54,705	25,649,838	0.2%
1999	Whatcom	52,473	20,531,014	0.3%
1998	Whatcom	35,364	22,887,563	0.2%
2001	Pierce	1,299,258	146,600,671	0.9%
2000	Pierce	724,573	140,953,670	0.5%
2001	King	1,632,051	323,123,447	0.5%
2000	King	631,034	289,222,117	0.2%
1999	King	444,037	278,177,317	0.2%
2001	Clallam	61,184	12,462,090	0.5%
2000	Clallam	2,610	11,131,959	0.02%
2001	Snohomish	470,456	101,148,604	0.5%
2000	Snohomish	222,108	92,296,724	0.2%

**2001 Total:** 5,495,702  
**2000 Total:** 1,865,154  
**1999 Total:** 503,901  
**1998 Total:** 35,364

List consists of  
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**TOTAL CLAIMS: 7,900,121**

Notes:

1. The list has been prioritized in order of the impact of counties' 2001 aggravated murder costs on their 2001 criminal justice budgets.
2. In response to a legislative request, 2001, 2000, 1999, and 1998 costs are listed separately.
3. Undocumented expenses, expenses not entered in the petition, costs of cases not active in 2001, capital expenses, and fixed costs such as rent were disallowed in order to calculate counties' Adjusted Claims.
4. Criminal justice budget figures were compiled by the Washington State Association of Counties.
5. Budget impacts were rounded. The three counties' claims listed last appear in the order of their actual (unrounded) 2001 criminal justice budget impacts; specifically, King County .51%, Clallam County .49%, Snohomish County, .47 %.